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**UNITED STATES BANKRUPTCY COURT**  
**DISTRICT OF ARIZONA**

In Re: ) Chapter 11  
)  
) Case Nos. 98-12547 through  
BCE WEST, L.P., et al., ) 98-12570-ECF-CGC  
)  
Debtors. ) Jointly Administered  
)  
EID: 38-3196719 ) **OBJECTION TO MOTION FOR**  
) **RELIEF FROM AUTOMATIC STAY**  
) **FILED ON BEHALF OF KATRINA**  
) **HILL [DE 1043]**  
)  
)

BCE West, L.P., Boston Chicken, Inc., Mayfair Partners, L.P., BC Great Lakes, L.L.C.,  
BC GoldenGate, L.L.C., B.C.B.M. Southwest, L.P., BC Boston, L.P., BC Superior, L.L.C., BC  
Heartland, L.L.C., BC Tri-States, L.L.C., Finest Foodservice, L.L.C., BC New York, L.L.C.,  
R&A Food Services, L.P., P&L Food Services, L.L.C., Mid-Atlantic Restaurant Systems, Inc.,  
BCI Massachusetts, Inc., BCI Southwest, Inc., BC Real Estate Investments, Inc., BCI Mayfair,  
Inc., Progressive Food Concepts, Inc., BCI R&A, Inc., BCI West, Inc., BCI Acquisition Sub,

1 L.L.C., and Buffalo P&L Food Services, Inc., debtors and debtors in possession (the "Debtors")  
2 file this Objection to the Motion for Relief from Automatic Stay filed on behalf of Katrina Hill. In  
3 support of this Objection, Debtors state as follows:

## 4 **I. BACKGROUND**

5  
6 1. On October 5, 1998 (the "Petition Date"), the Debtors filed voluntary petitions for  
7 relief under Chapter 11, Title 11 of the United States Code (the "Bankruptcy Code"), in the  
8 United States Bankruptcy Court for the District of Arizona (the "Court").

9 2. On or about July 15, 1999, Michael Radbill filed a Motion for Relief from the  
10 Automatic Stay [DE 1043] (the "Motion") on behalf of Katrina Hill ("Hill").

11 3. Hill's Motion alleges that she filed a Complaint against Mid-Atlantic Restaurant  
12 Systems, Inc. ("MARS"), a debtor in these cases, on May 24, 1999 in the Court of Common  
13 Pleas of Pennsylvania, Philadelphia County. According to Hill's Motion, the Complaint alleges  
14 that she was injured on premises controlled by MARS on May 27, 1997 and that insurance  
15 coverage exists. Hill's Motion seeks an order from the Court lifting the automatic stay "to the  
16 extent of liability coverage provided by the liability policy...".

17  
18 4. Hill's Complaint against MARS was filed over seven months after MARS filed  
19 bankruptcy and does not waive any other claims against the estate.

## 20 **II. ARGUMENT AND AUTHORITIES**

21  
22 5. Debtors oppose the Motion because the Complaint against MARS was filed in  
23 violation of the automatic stay without any effort by Hill or her attorney to seek a modification to  
24 permit such filing.

1           6.       Section 362 of the Bankruptcy Code clearly and unequivocally enjoins and stays  
2 entities from commencing or continuing, including the issuance of employment of process, of  
3 any action or proceeding, that could have been commenced against the Debtors prior to their  
4 filing bankruptcy. 11 U.S.C. §362. Despite the automatic stay, Hill initiated and filed a lawsuit  
5 against MARS based upon an alleged pre-petition occurrence and possibly attempted to issue  
6 process on MARS.  
7

8           7.       Hill's lawsuit was filed in violation of the automatic stay, and, therefore, should be  
9 considered void and without effect. *See Schwartz v. United States (In re Schwartz)*, 954 F.2d  
10 569, 571 (9<sup>th</sup> Cir. 1992) (violations of the Bankruptcy Code's automatic stay provisions are void  
11 negating the need for the debtor to affirmatively challenge creditor violations of the stay).  
12

13           8.       Debtors not only oppose the Motion because the lawsuit was filed in violation of  
14 the stay and, therefore, should be considered void but also because Hill has not provided  
15 sufficient cause for the relief from the automatic stay.

16           9.       The purpose of the automatic stay is "to ensure orderly administration of the  
17 debtor's estate to protect the creditors' right to equality of distribution [citations omitted]; to  
18 provide a breathing spell for the debtor [citations omitted]; and to maintain the status quo."  
19 *Morgan Guar. Trust Co. v. American Sav. & Loan Ass'n*, 804 F.2d 1487, 1491 (9th Cir. 1986),  
20 *cert. denied*, 482 U.S. 929 (1987). Based upon Hill's requests to this Court, it appears that she is  
21 not waiving her claims against the estate and may be requesting that she be treated as an  
22 unsecured creditor of the Debtor's estate with respect to any deficiency. Accordingly, Hill  
23 appears to be requesting relief that is contrary to the purpose of the automatic stay by requesting  
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1 that her claim be liquidated ahead of those of other creditors and in a forum of her choosing.

2 10. Rather than maintaining equality of distribution among creditors, Hill's Motion  
3 seeks a greater benefit than other creditors similarly situated.

4 11. This Court has held that it "must make the following determinations in deciding  
5 [whether] case exists to modify the stay:  
6

7 1) Whether the litigation causes debtor great prejudice. [citation omitted]

8 2) Whether a balancing of the respective hardships tips in favor of the debtor  
9 or the creditor, resulting from denial or granting of relief.

10 3) Whether public policy supports the type or kind of action the Movant is  
11 bring against the Debtor."

12 *In re America West Airline*, 148 B.R. 920, 923 (Bankr. D. Az. 1993). Hill failed to satisfy any of  
13 those criteria, and cannot satisfy them.

14 12. If Hill's action against MARS is allowed to proceed, notwithstanding that it was  
15 filed in violation of the stay, and Hill is not waiving her claims against the estate, then the  
16 Debtors will suffer prejudice. Sufficient cause does not exist to permit the adjudication of the  
17 Hill claim in a court other than this Court.

18 13. Hill, on the other hand, would hardly be harmed by maintenance of the stay. This  
19 case was filed recently and is not ready for trial. Accordingly, there is no justifiable reason to  
20 allow Hill relief from the stay. *See In re Universal Life Church, Inc.*, 127 B.R. 453, 454 (E.D.  
21 Cal. 1991), *aff'd*, 965 F.2d 777 (9th Cir. 1992) (Ninth Circuit affirming modification of the stay  
22 to permit litigation to proceed in another forum by relying heavily on the fact that the case was  
23  
24  
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1 within two weeks of trial when the bankruptcy was filed, and the trial had already been continued  
2 four times).

3 14. The Debtors further object to the Motion because Hill has not complied with  
4 Local Bankruptcy Rule 4001 by failing to serve all parties required to receive notice of such a  
5 motion and by failing to submit a proposed order.  
6

7 15. Based upon the foregoing, the Debtors object to the relief requested and request  
8 that this Court dismiss the Motion, or, alternatively, deny the relief requested in the Motion.

9 Respectfully submitted this 29<sup>th</sup> day of July, 1999.

10 DEBTORS AND DEBTORS IN POSSESSION

11  
12 By: /s/ H. Rey Stroube, III  
13 One of their Attorneys

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on July 29, 1999, the foregoing document was served by E-mail or first class United States Mail, postage prepaid, on all parties on the Master Service List #11 dated July 22, 1999, and to the following party of interest:

Michael Radbill  
Law Offices of Michael Radbill  
325 Chestnut Street, Suite 719  
Philadelphia, PA 19106

\_\_\_\_\_/s/ Laura DeWitt